Supreme Court of the United States

October Term, 1953

No. 40

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

vs.

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Supreme Court of the United States

October Term, 1953

No. 691

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

vs.

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The questions presented do not fall within the category of matters which merit review by this Court.

The First Question

1. Where a foreign flag vessel is lost upon the high seas and beyond the territorial jurisdiction of the forum, is not the question of the survivorship of a cause of action founded upon such loss against a deceased tort feasor to be determined by the Maritime Law rather than by the law of the forum?

The petitioners being American citizens, the flag of the vessel is entirely immaterial. There does not seem to be any division of jurisprudence which has been classified as "Maritime Law".

There can be no distinction drawn between existing law and theoretical non-existent law.

The Second Question

2. If the law of the forum as to survivorship of actions is to apply, must not the plaintiff (in a Jones Act case) comply with all of the applicable laws of that forum, including specifically the requirement that notice of such claim must be filed in estate proceedings within a specified time?

The question as to the Jones Act taking precedence over State Law has been so well settled that further review does not seem to be indicated.

This was fully discussed by the Court below in the case at bar in the opinion which is reported in 210 F. (2d) at page 80 as follows:

> "In Lindgren v. United States (281 U. S. 38, 50 S. Ct. 211), the court made these pertinent observations in reference to the Jones Act. It 'establishes as a modification of the prior maritime law a rule of general application in reference to the liability of the owners of vessels for injuries to seamen extending territorially as far as Congress can make it go; that this operates uniformly within all of the States * * *; and that, as it covers the entire field of liability for injuries to seamen, it is paramount and exclusive, and supersedes the operation of all state statutes dealing with that subject."

The Third Question

3. Does not the tenth amendment to the United States Constitution reserve to the states the exclusive power to govern the administration and distribution of the estates of decedents, and does not the decision of the Court of Appeals in ignoring the non-claim section of the Florida probate law do violence to that amendment by permitting a Federal law, the Jones Act, to interfere with the administration of decedents' estates?

Petitioners concede at page 11 that they would be governed by the Jones Act had Cox and Harrington been alive until the termination of the action.

The obsolete and archaic principles of law which in the past permitted miscarriage of justice on mere technicality, are no longer tolerated by our Courts.

This Court has repeatedly stated that it will be governed by principles of substantial justice rather than by technicalities. *Pope & Talbot* v. *Hawn*, 74 S. Ct. 202.

In the case of *Nordquist* v. *United States Trust Co. of New York*, 188 F. (2d) 776, the Court reviewed the underlying principles of justice in treating with matters involving survivorship rights against decedents, as to rights created by the Jones Act.

Concluding with the following comments at page 778, wherein the Court stated as follows:

> "* * * Where the frustration of the clear purposes of the Act is so patently the result of a failure to foresee the consequences of a seldom recurring situation, the courts in this strictly limited sphere have never been inclined to let the plaintiff go remediless. E. g., Cabell v. Markham, 2 Cir., 148 F. 2d 737, affirmed 326 U. S. 404, 66 S. Ct. 193, 90 L. Ed. 165; Securities and Exchange Commission v. United States Realty & Improvement Co., 310 U. S.

434, 60 S. Ct. 1044, 84 L. Ed. 1293; Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U. S. 315, 332, 59 S. Ct. 191, 83 L. Ed. 195; Rector etc. of Holy Trinity Church v. United States, 143 U. S. 457, 12 S. Ct. 511, 36 L. Ed. 226. We, therefore, read into the Jones Act the omitted survival proviso and remand the cause for a trial upon the merits * * *."

It is respectfully submitted that the petition be denied.

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of Counsel.